SINGAPORE REPORTS

COLLIN DEVELOPMENT (PTE) LTD. v. HONG LEONG HOLDINGS LTD.

[C.A. (Wee Chong Jin C.J., Kulasekaram and Choor Singh JJ.) September 10, 1976]
[Singapore — Court of Appeal No. 11 of 1976]

Easement — Right of way — Quia timet injunction — Rights of co-owners of dominant tenements — Practice — Declaration — Liberty to apply.

This was an appeal against the decision of Chua J. reported in [1976] 1 M.L.J. 164.

Held, dismissing the appeal: (1) it is conceded that for the owner of a dominant tenement to succeed in an application for a *quia timet* injunction he has to show that there is likely to be substantial interference of his enjoyment of the right of way granted to him over the servient tenement. The answer depends upon the nature of the right of way, of the *locus in quo* and upon the general circumstances of the case;

(2) this was not a case for an order declaring the respondent should not use the servient tenement in such a manner as to cause substantial interference with the appellants' use of the servient tenement or to cause nuisance to the appellant.

[Editorial Note: The practice of making a declaratory order with liberty to apply is discussed in *Jelbert* v. *Davies & Anor.* [1968], All E.R. 1182; [1968] 1 W.L.R. 589].

COURT OF APPEAL.

C.S. Wu for the appellant.

Cheng Tim Pin for the respondent.

Wee Chong Jin C.J.: The plaintiff/appellant, Collin Development (Pte) Limited, is the present owner of two pieces of land known as Lot 111-32 and Lot 111-33 of T.S. XXI and the defendant/respondent, Hong Leong Holdings Limited, is the present owner of Lot 111-34 and an adjoining piece of land known as Lot 561 (formerly known as Lot 122) of the same Town Subdivision.

Adjoining Lots 111-32, 111-33 and 111-34 is Lot 111-31 over which there is a right of way vested by grant in the owners of Lots 111-32, 111-33 and 111-34. Lot 111-31 is a long, narrow but irregular strip of land containing an area of 9,274 square feet. It is a reserve for road, is approximately 280 feet long, at its widest point is approximately 60 feet and at its narrowest point is approximately 21 feet. At present it contains a metalled road the width of which varies from 11 to 16 feet. Lots 111-31, 111-32, 111-33 and 111-34 together with Lot 111-30 were formerly one lot owned by a company known as Mutual Trading Ltd. In 1919 Mutual Trading Ltd., then in liquidation, sold Lots 111-30, 111-32, 111-33 and 111-34 and granted a right of way over Lot 111-31 to the purchasers of the four Lots sold by them. The right of way is in the following terms: —

"And Together with full and free right and liberty for the Purchaser his executors administrators and assigns being the owner or owners for the time being of the land hereby conveyed or any part thereof and their tenants and servants and all other persons authorised by him or them in common with others having a similar right from time to time and at all times hereafter at his and their will and pleasure to pass and repass with or without animals and vehicles, in along and over (Lot 111-31)."

Both the appellant and the respondent are land developers. At the time of the filing of the Writ in December 1974 the respondent was in the course of building three blocks of 120 high-rise flats with ancillary amenities on its properties Lot 561 and Lot 111-34. The blocks of flats are being constructed on Lot 561 and a garden, swimming pool, tennis courts etc. on Lot 111-34. In its original "Layout Plan" in 1970 the respondent proposed to use Lot 111-31 as a means of access from Grange Road, a public street, to the three blocks of flats to be erected on Lot 561. Lot 111-31 adjoins Grange Road and is the only means of access to and from a public street, in this case Grange Road, for Lots 111-33 and 111-34. Lot 111-31 also appears to be used by Lot 111-32 as a means of access to Grange Road.

At the trial the respondent's architect, who gave his evidence in November 1975, said: —

"The road on Lot 111-34 is metalled now. Yes it is intended to link up with the road on Lot 111-31. We have not metalled the road on Lot 111-31 as we were stopped by court injunction."

The architect also said that the road to be metalled on Lot 111-31 was intended to be for ingress only from Grange Road to the proposed high-rise flats on Lot 561. The layout plan also provides for access to and from the proposed flats from and to River Valley Road and St. Thomas Walk.

The trial judge came to the conclusion that it would be highly improbable that vehicular traffic using Lot 111-31 as an access road from Grange Road to the proposed flats would be so heavy as to substantially interfere with the appellant's right of way and refused to grant a *quia timet* injunction to restrain the respondent as owner of Lot 561 from using and inviting its purchasers and other persons to use Lot 111-31 for the purpose of passing either to or from Grange Road.

Against this finding and refusal of the trial judge to grant a *quia timet* injunction the appellant now appeals. It is conceded that for the owner of a dominant tenement to succeed in an application for a *quia timet* injunction, he has to show that there is likely to be a substantial interference with his enjoyment of the right of way granted to him over the servient tenement. The answer to that question depends upon the nature of the right of way, of the *locus in quo*, and upon the general circumstances of the case.

In the present case the evidence is that under the layout plan the respondent proposes to metal the existing road on Lot 111-31 to a width of 18 feet throughout its entire length to link up with a metalled road now on Lot 111-34 and that the respondent intends the metalled road along these two lots to be used as an ingress road from Grange Road to the proposed flats in the course of erection on Lot 561. Mutual Trading Ltd., the owner of Lot 111-31, the servient tenement, has since 1919 or soon thereafter ceased in law to exist as the company has been liquidated.

It is contended on behalf of the appellant, on whose two properties there are two dwelling houses which are presently unoccupied except by a gardener and a watchman in one and at week-ends by one of the directors in the other, that the volume of

vehicular traffic passing through the servient tenement from Grange Road to the 120 flats on Lot 561 when they are completed and occupied must be such as to amount to a substantial interference with the appellant's right to use the servient tenement for ingress to and egress from the dominant tenement. It is submitted, having regard to the respondent's evidence that the intention is for the occupiers of the 120 flats to use the metalled road which would run through the servient tenement as a one way road for ingress to the flats from Grange Road, that such use would create a danger to the appellant in his enjoyment of his right to use the servient tenement as a means of egress from his properties to Grange Road.

As we have said, the question turns on the facts and circumstances of the particular case. The way in question is about 280 feet long and the metalled portion will be 18 feet wide. It will be used as a one way road by the occupiers, and their invitees, of 120 flats to their flats from Grange Road but they will have other means of access to these flats. It is reasonable to assume that all the occupiers of these flats own cars. It is also reasonable to infer that not more than half of the occupiers would be passing along this metalled road when they return to their flats from work, shops, markets, etc. nor would they be passing along it at the same time. The appellant presently rarely uses it and is unlikely to do so in the near future. The trial judge was of the opinion on the facts before him that it would be highly improbable that vehicular traffic using it would be so heavy as to substantially interfere with the appellant's right of way and his opinion is entitled to great weight. For ourselves, we have arrived at a similar view. As regards the element of danger, we are of the opinion that the volume of vehicular traffic that is likely to use the servient tenement in the near future would not be such as to constitute a danger to the appellant in his enjoyment of the right of way.

Accordingly, in our judgment no case has been made out for a *quia timet* injunction at the present time. This is also not a case for us to make, as urged by the appellant that we should, an order declaring that the respondent should not use the servient tenement in such a manner as to cause a substantial interference with the use of the servient tenement by the appellant or to cause a nuisance to the appellant, with liberty to the appellant to apply for an injunction.

For all these reasons we would dismiss the appeal with costs. It does not preclude the appellant in the future, if and when the facts and circumstances have changed, from seeking whatever remedy it may be advised to seek.

Kulasekaram and **Choor Singh JJ.** concurred.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Yap & Yap.*

U.C.S. PTE. LTD. v. COMPTROLLER OF INCOME TAX

[C.A. (Wee Chong Jin C.J., Winslow and Tan Ah Tah JJ.) September 21, 1976]

[Singapore — Civil Appeal No. 11 of 1975]

Revenue Law — Income Tax — Economic expansion incentives — How should exempt income in an export enterprise be computed — Whether capital allowances should be deducted in arriving at such exempt profit — Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 135), ss. 30 and 32(1).

This was an appeal by the appellant company against the decision of the High Court affirming the order of the Income Tax Board of Review held in favour of the Comptroller of Income Tax.

In this case the appellant company which is engaged in the business of manufacturing dry cell batteries, is an export enterprise for purposes of the Economic Expansion Incentives (Relief from Income Tax) Act. As an approved export enterprise it would be exempt from income tax in respect of a portion of its export profit. For each year of assessment the law requires two computations to be made, one under the Incentives Act to determine the exempt profit and the other under the Income Tax Act to determine the taxable income. The dispute in issue concerns the method of computation of the amount of export profit that should qualify for exemption from tax, and in this regard the issue is whether section 32(1) of the Incentives Act makes it mandatory for capital allowances to be deducted in arriving at such exempt profit.

Held: the Comptroller's contention that capital allowances should be deducted in arriving at the exempt profit is correct and is in accordance with the provisions of section 32(1).

COURT OF APPEAL.

Michael Nolan Q.C. (*Lim Chor Pee* with him) for the appellant.

James S.C. Chia (*Lucy Hangchi* (State Counsel) with him) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court*): This appeal by the appellant/taxpayer from the judgment of the High Court dismissing his appeal against the Order of the Income Tax Board of Review in favour of the respondent, Comptroller of Income Tax, raises an issue of some complexity involving the true interpretation of subsection (1) of section 32 of the Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 135), (hereinafter referred to as "the Incentives Act"), which is identical with subsection (1) of section 30 of the Incentives Act of 1967 (No. 36 of 1967) which, as amended in 1970, became the Incentives Act aforesaid.

Although four years of assessment, from 1968 to 1971 inclusive, were under separate appeals before the Board, it was agreed between the parties that a decision on the question of construction involved in respect of the year of assessment, 1968, would be equally binding in respect of the three other appeals. It should also be borne in mind that, although in this judgment, the numbering of the sections used both by the court below as well as the Board is followed in order to avoid confusion, to wit, the numbering contained in Cap. 135, the sections with which we are really concerned are the same sections with different

* At the time of the judgment Tan Ah Tah J. had passed away, [1976] 2 M.L.J. lxxviii.